

## CHAPTER 659

### ELECTION PROCEDURE

#### Hours of Polling

**659:1, 2** Repealed by Chapter 10, Laws of 1988

**659:3 Early Closing of Polls.** Notwithstanding any provision of law to the contrary, the voters present at the polling place may vote to close the polls at any time that the number of those who have voted plus the number of absentee ballots received at the polls equals the number of names on the checklist.

**659:3-a Early Closing of Polls in Dixville and Hart's Location.** The polls may not be closed pursuant to RSA 659:3 in Dixville or Hart's Location until every person domiciled in the town who is not on the checklist has been contacted by the town clerk to see if they wish to register to vote prior to the closing of the polls.

**659:4 Hours of Polling in Municipalities.** At all state elections in towns and cities the polls shall open not later than 11 o'clock in the morning and shall close not earlier than 7 o'clock in the evening. In cities, the city council shall determine the polling hours no later than 30 days prior to a state election.

**659:4-a Change of Polling Hours in Towns.** I. At any annual town meeting, any town may vote to place a question on the state election ballot to change the hours at which polls shall open, provided that the polls shall not open later than 11 o'clock in the morning and shall not close earlier than 7 o'clock in the evening. Such vote shall be under an article inserted into the warrant pursuant to RSA 39:3. The wording of the question shall be as follows:

"Polling hours in the town of (name of town) are now (hour at which polls now open) to (hour at which polls now close). Shall we place a question on the state election ballot to change polling hours so that polls shall open at (proposed hour at which polls would open) and close at (proposed hour at which polls would close) for all regular state elections beginning (next state election)?"

II. Upon an affirmative vote on the question in paragraph I, the governing body of the town shall notify the secretary of state, by the filing deadline established in RSA 655:14, of the approved times for the question to be printed on the next state general election ballot. The secretary of state shall place the following question on the next state general election ballot in the form prescribed by RSA 656:13:

"Polling hours in the town of (name of town) are now (hour at which polls now open) to (hour at which polls now close). Shall we change polling hours so that polls shall open at (proposed hour at which polls would open) and close at (proposed hour at which polls would close) for all regular state elections beginning (next state election)?"

III. In a town with a town council as the legislative body, the town council may vote to place a question on the state election ballot to change the hours at which polls shall open, provided that the polls shall not open later than 11 o'clock in the morning and shall not close earlier than 7 o'clock in the evening. The governing body shall notify the secretary of state of the question to be placed on the ballot in accordance with the requirements of paragraph II.

IV. As an alternative to the procedures established in paragraphs I-III, the governing body of a town may extend the hours of polling in the town, provided that no extension of the hours of polling adopted under this paragraph shall take effect sooner than 60 days after its adoption. Any reduction of the hours of polling adopted under this paragraph shall conform to the provisions of paragraphs I-III.

**659:5** Repealed by Chapter 10, Laws of 1988

**659:6 Other Changes in Hours of Polling.** Except as provided in RSA 659:3, in all state elections, the voters present at the polling place may vote to keep the polls open until a later hour but may not vote to close the polls at an earlier hour than that prescribed in the warrant.

**659:7** Repealed by Chapter 10, Laws of 1988

**659:8 At Additional Polling Places.** The hours of polling at any additional polling place shall be the same as those at the central polling place as provided in RSA 658:16.

### **Conduct of Voting**

**659:9 Moderator to Oversee Voting.** It shall be the duty of the moderator to secure the observance of the provisions of the following sections relating to the conduct of voting.

**659:9-a City Chief Elections Officer Duties.** The city chief elections officer shall establish uniform practices and procedures that conform to state and federal law for the conduct of elections at all polling places within the city. The moderators and other election officials who conduct elections at the individual polling places within the city shall comply with the uniform procedures established for the city by the city chief elections officer. The secretary of state shall resolve any conflicting interpretations of state and federal laws arising between the chief elections officer and other election officials. The legislative body of any city may vote to have the duties of the ward officers relative to the selection and equipping of polling places assigned to the city chief elections officer.

**659:10 Supervisors Attendance Required Where Checklist is Used.** The supervisors shall be present at the opening of each election at which a checklist is to be used and shall have with them the corrected checklist for that election and shall remain in attendance until the close of the election.

**659:11 Conduct of Voting at Additional Polling Places.** The voting at each additional polling place shall be conducted as at the central polling place as provided in RSA 658:16.

### **Voting Procedure**

**659:12 Who Can Vote.** All persons whose names are entered upon the corrected checklist brought by the town or ward clerk to the polling place shall be entitled to vote. No person whose name is not upon the checklist shall be allowed to vote, unless, in the opinion of the supervisors of the checklist, it clearly appears that the name of a qualified voter has been omitted from the checklist by clerical error or mistake or that the person is a serviceman on leave who is qualified to vote and who by reason of such service was not in the town or city of his or her legal domicile at the time of the last session of the supervisors of the checklist.

**659:13 Obtaining a Ballot.** A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the paper checklist and the supervisors of the checklist shall cause the centralized voter registration database to reflect the correction. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state.

**659:13-a Observing Voter Check-In.** No person not authorized by law may stand or sit within 6 feet of the ballot clerk for purposes of observing the check-in of voters without the express permission of the moderator.

**659:14 Voting in Primary Elections.** I. A person desiring to vote at a state or presidential primary election shall, at the time of announcing the person's name, also announce the name of the party to which the person belongs or whether the person is registered as an undeclared voter. If the person's party membership has been registered before, the person shall be given only the ballot of the party with which the person is registered, unless the person desires to vote the ballot of a party not having official existence at the time the person's party membership was previously registered, in which case the person may vote the ballot of such a party in the state primary election immediately following the political organization's official existence as a party, and not in any subsequent state primary election. A person may also vote the ballot of such a party in the presidential primary election only if the presidential primary election precedes the state

primary election to be held in that same year. If the rules of a party permit a person who is registered as an undeclared voter to vote in the party's primary, any person desiring to vote in that party's primary shall also announce the name of that party at the time of announcing the person's name. No person shall be permitted to vote in any more than one party primary during any primary election.

II. The secretary of state shall include on the voter instruction cards required by RSA 658:28 whether a party rule has been adopted which permits a person who is registered as an undeclared voter to vote in the party's primary. The party chairman shall notify the secretary of state in writing prior to the filing period for state offices whether the party has adopted such a rule. This rule shall not be changed or rescinded by a party until the results of the primary have been announced, and any change or rescission shall be mailed to the secretary of state by the party chairman.

**659:15 Voter Proceeds to Booth.** On receipt of his ballot, the voter shall forthwith without leaving the space enclosed by the guardrail proceed to one of the voting booths and shall mark his ballot.

**659:16 Number of Voters Allowed Within Guardrail.** The number of voters within the guardrail at any one time shall not exceed the number of voting booths at the polling place, provided that the number of voters shall not include election officers or any voter who is engaged in the act of handing his ballot to the moderator.

**659:17 Marking the Ballot; Instructions to Voters.** The secretary of state shall provide on the top of the general election ballot the following voting instructions. The secretary of state is authorized to replace the phrase "Make the appropriate mark" with an appropriate description and example of the mark to be made for the type of ballot in use, such as "Make a cross (X) in the box," "Completely fill in the oval," or "Complete the arrow":

- 1) To Vote: Make the appropriate mark to the right of your choice. For each office vote for not more than the number of candidates stated in the sentence: "Vote for not more than \_\_\_\_." If you vote for more than the stated number of candidates, your vote for that office will not be counted.
- 2) To Vote by Write-In: To vote for a person whose name is not printed on the ballot, write in the name of the person in the "write-in" space. Make the appropriate mark to the right of your choice.

**659:17-a Appropriate Mark.** For the purposes of this chapter, the term "appropriate mark" shall mean the mark to be used in the proper manner of marking the ballot as stipulated in the instructions to voters.

**659:18 Instructions for Write-In Voting.** Repealed by Ch. 201; 2004.

**659:19 Voting on Questions.** A voter shall vote on questions submitted to voters by making an appropriate mark as instructed on the ballot next to the answer he or she desires to give.

**659:20 Assistance in Voting.** Any voter who declares to the moderator under oath that said voter needs assistance marking his or her ballot shall, upon the voter's choice and request after the moderator has informed the voter of the accessible voting options that are available at the polling place, receive the assistance of one or both of the inspectors of election detailed for that purpose by the moderator or of a person of the voter's choice provided that the person is not the voter's employer or union official. Such person so assisting shall be sworn, shall mark the ballot as directed by said voter, and shall thereafter give no information regarding the same. Such person so assisting shall leave the space within the guardrail with the voter.

**659:21 Admittance Within Guardrail.** No person other than the election officers, the voters admitted or those admitted to aid a voter pursuant to RSA 659:20 shall be permitted within the guardrail except by the authority of the election officers and, then, only for the purpose of keeping order and enforcing the law.

**659:22 Spoiled Ballots.** If any voter spoils a ballot, he may receive others, one at a time, not exceeding 3 in all, upon returning each spoiled one. The ballots thus returned shall be immediately marked "cancelled" by the moderator over his signature and, at the close of the polls, shall be preserved as provided in RSA 659:95.

**659:23 Folding and Depositing Ballot.** I. Before leaving the voting booth, the voter shall fold his ballot in the same way it was folded when received by him and shall keep it folded so that the marks on it cannot be seen. He shall then proceed to the checkout table and shall announce his name to the town clerk who shall repeat the name and place a mark beside it on his checklist. The voter shall then present his ballot with the official endorsement uppermost to the moderator who shall then deposit the ballot in the ballot box.

II. The provisions of paragraph I shall not apply in cities and towns which use one or more electronic ballot counting devices for the counting of ballots, as provided in RSA 656:40.

**659:24 Unofficial Ballots.** If the supply of ballots shall become exhausted before the closing of the polls, it shall be the duty of the town or city clerk to cause unofficial ballots to be prepared as provided in RSA 658:35. Except as provided in this section and in RSA 658:35, no ballot without the official endorsement shall be allowed to be deposited in the ballot box.

**659:25 Time Allowed for Voting.** The voter shall mark and deliver the ballot without undue delay and shall leave the enclosed space within the guardrail as soon as he or she has delivered the ballot to the moderator. No voter shall be allowed to occupy a voting booth already occupied by another voter nor be allowed to remain within the enclosed space more than the time determined by the moderator.

**659:26 Voters Not Readmitted.** No voter, other than an election officer, whose name has been checked on the list by ballot clerks shall be allowed to re-enter the enclosed space within the guardrail during the hours of polling except as provided in RSA 659:20.

**RSA 659:26-a Hours of Polling Extended by Order.** In any federal election where hours of polling are extended by a federal or state court order or other order, the moderator or his or her designee shall mark all ballots cast during the extended hours of polling "EH." These extended hours ballots shall be counted in the usual manner, but shall be separated and held apart from other ballots when stored.

## Challenges

**659:27 Challenge of Voter; Affidavit.** I. A voter offering to vote at any state election may be challenged by any other voter registered in the town or ward in which the election is held, an election official, a challenger appointed by a political committee pursuant to RSA 666:4, or a challenger appointed by the attorney general pursuant to RSA 666:5.

II. Upon receipt of a written challenge, the moderator shall determine if the challenge to the ballot is well grounded. If the moderator determines that the challenge is well grounded, the moderator shall not receive the vote of the person so challenged until the person signs and gives to the moderator an affidavit in the following form: I, \_\_\_\_\_, do solemnly swear (or affirm) under penalties of voter fraud, that I am the identical person whom I represent myself to be, that I am a duly qualified voter of this town (or ward), and have a legal domicile therein. If the moderator determines that the challenge is not well grounded, the moderator shall permit the voter to proceed to vote.

III. No voter or appointed challenger shall challenge a person's qualifications to be a voter at the election day registration table.

**659:27-a Asserting a Challenge.** I. No challenge may be asserted except in the form of a signed affidavit, under oath administered by an election official, in the following form:

### INFORMATION ON THE PERSON MAKING THE CHALLENGE

Name of Person Making the Challenge: \_\_\_\_\_ (Last Name First Name Middle Name/Initial)

Party Affiliation: \_\_\_\_\_

If person making a challenge is a voter: \_\_\_\_\_ Physical Address – Street Name & Number

If person is a political party or attorney general appointee: \_\_\_\_\_ mailing address & phone number

The challenger's qualifications to assert the challenge

**INFORMATION ON THE VOTER BEING CHALLENGED:** The person making the challenge shall complete the following:

Name being used by the voter who you wish to challenge: \_\_\_\_\_ Last Name First Name Middle Name

**GROUND FOR THE CHALLENGE:** The person making the challenge shall indicate the ground on which the challenge is made (check all grounds that apply).

\_\_\_ The person seeking to vote is not the individual whose name he or she has given.

\_\_\_ The person seeking to vote has already voted in the election at (name polling place) \_\_\_\_\_ at approximately (state time if known) \_\_\_\_\_.

\_\_\_ The person seeking to vote is disqualified as a voter by conviction of a willful violation of the election laws (state offense, court, and date of conviction) \_\_\_\_\_.

\_\_\_ The person seeking to vote is under 18 years of age.

\_\_\_ The person seeking to vote is not a United States Citizen.

\_\_\_ The person seeking to vote is not domiciled in the town or ward where he or she is seeking to vote (state person's true domicile – town/city) \_\_\_\_\_.

\_\_\_ The person seeking to vote does not reside at the address listed for that person on the checklist.

\_\_\_ The person seeking to vote is an incarcerated convicted felon who is currently sentenced to incarceration (state name of institution person is in) \_\_\_\_\_.

\_\_\_ This is a primary and the person seeking to vote in the (state political party name) \_\_\_\_\_ primary is not a declared member of the party he or she claims to be affiliated with.

\_\_\_ The person seeking to vote is ineligible to vote pursuant to the following state or federal statute or constitutional provision: \_\_\_\_\_.

**BASIS FOR THE CHALLENGE:** The person making the challenge shall state the specific source of the information or personal knowledge upon which the challenge of the particular individual is based:

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**OATH:** The person making the challenge shall complete the following: I hereby swear and affirm, under the penalties of perjury, that to the best of my knowledge and belief the information above is true and correct. \_\_\_\_\_

(Signature of challenger)

On the date shown above, before me, \_\_\_\_\_ (print name of notary public, justice of the peace, election officer), appeared \_\_\_\_\_ (print name of person whose signature is being notarized), known to me or satisfactorily proven (circle one) to be the person whose name appears above, and he or she subscribed his or her name to the foregoing affidavit and swore that the facts contained in this affidavit are true to the best of his or her knowledge and belief.

\_\_\_\_\_  
Notary Public/Justice of the Peace/Official Authorized by RSA 659:30

**TO BE COMPLETED BY THE MODERATOR:** Ruling on the challenge: If the ground at issue is age, citizenship, or domicile: The supervisors of the checklist have ruled that the challenged voter is: qualified as a voter; not qualified as a voter.

The moderator rules on challenges based on other grounds. The moderator rules that the challenge is: well ground; not well grounded. If it is ruled that the voter is not qualified or that the challenge is well grounded, the challenged person may vote only if he or she completes and swears to a challenged voter affidavit.

II. A challenge may be asserted only upon personal knowledge or other basis of probable cause that the challenged voter is ineligible to vote. No challenge may be accepted unless one of the following grounds is asserted and specific facts are offered in support of such grounds:

(a) The person seeking to vote is not the individual whose name he or she has given.

(b) The person seeking to vote has already voted in the election at the time and place specified in the challenge.

(c) The person seeking to vote is disqualified as a voter by conviction of a willful violation of the election laws, such conviction having been for the offense specified in the challenge.

(d) The person seeking to vote in under 18 years of age.

(e) The person seeking to vote is not a United States citizen.

(f) The person seeking to vote is not domiciled in the town or ward where he or she is seeking to vote because the person's true domicile is in the town or city specified in the challenge.

(g) The person seeking to vote does not reside at the address listed for that person on the checklist.

(h) The person seeking to vote is an incarcerated convicted felon who is currently sentenced to incarceration in the institution specified in the challenge.

(i) The person is attempting to vote in a primary and the person is not a declared member of the party with which he or she claims to be affiliated.

(j) The person is ineligible to vote pursuant to some other state or federal statute or constitutional provision specified in the challenge.

**659:28 Secretary of State to Prepare Affidavit Blanks.** The secretary of state shall prepare and distribute to the town and ward clerks before every state election printed blanks for the affidavits required by RSA 659:27.



**659:29 Special Provisions for State and Presidential Primary Elections.** Any voter at any state or presidential primary election may challenge any other voter offering to declare himself as a member of a party or to vote the ballot of a party. Such challenged voter shall not be allowed to so declare or so vote until he makes an oath or affirmation that he affiliates with and generally supports the candidates of the party.

**659:30 Affidavit.** The affidavit of a challenged voter, an asserting a challenge form, a qualified voter affidavit, a voter domicile affidavit, or any other affidavit required by the election statutes may be sworn before any person authorized by law to administer oaths or before any election officer.

**659:31 Receiving Vote.** A moderator shall not receive the vote of any voter who is challenged and who refuses to make an affidavit as required by RSA 659:27 or 659:29. A moderator who does receive the vote of such voter shall be guilty of a violation.

**659:32 Affidavits Recorded.** The town clerk shall record the name and domicile of all voters making such affidavits, the name of the person challenging and the reason for the challenge.

**659:33 Affidavits Preserved.** Repealed chapter 185; 2011.

### **Prohibited Acts**

**659:34 Wrongful Voting: Penalties for Voter Fraud.** I. A person is subject to a civil penalty not to exceed \$5,000 if such person:

(a) When registering to vote; when obtaining an official ballot; or when casting a vote by official ballot, makes a false material statement regarding his or her qualifications as a voter to an election officer or submits a voter registration form, and election day registration affidavit, a qualified voter affidavit, a domicile affidavit, or an absentee registration affidavit containing false material information regarding his or her qualifications as a voter;

(b) Votes more than once for any office or measure;

(c) Applies for a ballot in a name other than his or her own;

(d) Applies for a ballot in his or her own name after he or she has voted once;

(e) Votes for any office or measure at an election if such person is not qualified to vote as provided in RSA 654;

or

(f) Gives a false name or answer if under examination as to his or her qualifications as a voter before the supervisors of the checklist or moderator.

II. A person is guilty of a class B felony if, at any election, such person purposefully or knowingly commits an act specified in subparagraph I(b). A person is guilty of a class A misdemeanor if, at any election, such person purposefully or knowingly commits any of the other acts listed in paragraph I.

III. The attorney general is authorized to impose a civil penalty under paragraph I

(a) The attorney general may impose a civil penalty by providing written notice to the person:

(1) Setting forth the date, facts, and nature of each act or omission which makes the person liable to pay a civil penalty;

(2) Specifically identifying the particular provision or provisions of the law involved in each violation; and

(3) Advising the person of each penalty that the attorney general imposes and its amount.

(b) The written notice shall be served in hand or sent by registered or certified mail to the last known address of such person. The person shall have 30 days to pay any civil penalty assessed under this section to the secretary of state for deposit into the general fund.

IV. The decision of the attorney general to impose a civil penalty may be appealed to superior court. An appeal must be filed within 30 days of the date on which the person received it.

V. The attorney general is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The attorney general shall have the exclusive power to compromise, mitigate, or remit such civil penalties.

**659:34-a Voting in More Than One State Prohibited.** I. A person is guilty of a class B felony if, at any election, such person knowingly checks in at the checklist and casts a New Hampshire ballot on which one or more federal or statewide offices or statewide questions are listed if the person also casts a ballot in the same election year in any election held in any other state or territory of the United States where one or more federal or statewide offices or statewide questions are listed. For federal or statewide offices and statewide questions, neither the candidates nor the questions need be the same in both jurisdictions for a violation to occur. The titles for offices need not be identical, but must serve an equivalent role in government, for a violation to occur.

II. Two or more elections occur with the same election year if:

(a) The election for federal or statewide office or on a question being voted on statewide in another state or territory is held on the same day that New Hampshire holds its general election; or

(b) The term of office for any office listed on the ballot in the other state or territory starts in the same year as the term of office for that office or its equivalent in New Hampshire.

III. The state shall not be required to prove that the person actually marked the ballot for a candidate for any specific office; it shall be sufficient to prove that the person cast a ballot. Evidence that a person was checked off on the checklist, or the equivalent record in another state or territory as having voted is prima facie evidence that the person cast a ballot in that election.

IV. If the election in New Hampshire and the other state or territory are held on different dates, it is an affirmative defense that the person legitimately moved his or her domicile to or from the other state or territory between the dates when elections were held.

**659:35 Showing or Specially Marking Ballot.** I. No voter shall allow his ballot to be seen by any person with the intention of letting it be known how he is about to vote except as provided in RSA 659:20.

II. No voter shall place a distinguishing mark upon his ballot nor write in any name as the candidate of his choice with the intention of thereby placing a distinguishing mark upon his ballot.

III. No voter shall use or attempt to use any ballot not given him by the ballot clerk to accomplish any of the acts or purposes prohibited by paragraph I or II or both.

IV. Any person willfully violating any of the provisions of this section shall be guilty of a misdemeanor.

**659:36 Marking Ballot by Election Officers.** No mark of any nature shall be placed on any ballot by an election officer except as provided in RSA 659:20, 659:22 and 659:51. Whoever knowingly violates this section shall be guilty of a misdemeanor.

**659:37 Interfering with Voter, Etc.** No person shall interfere or attempt to interfere with any voter when such voter is in the space within the guardrail or endeavor to induce any voter before voting to show how he marks or has marked his ballot. Whoever knowingly violates this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

**659:38 Forgery; Removing Ballot.** No person shall forge or falsely make the official endorsement on any official ballot or furnish to any voter a ballot with the intent that such voter shall use the same in voting instead of the ballot given him by the ballot clerk or take or remove any ballot outside the guardrail before the close of the polls or knowingly delay the delivery of any ballots. Whoever knowingly violates this provision shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

**659:39 Giving Liquor.** Any person who shall directly or indirectly give intoxicating liquor to a voter at any time with a view to influencing any election shall be guilty as provided in RSA 640:2.

**659:40 Bribing; Intimidation; Suppression.** I. No person shall directly or indirectly bribe any person not to register to vote or any voter not to vote for or against any question submitted to voters or to vote for or against any ticket or candidate for office at any election.

II. No person shall use or threaten force, violence, or any tactic of coercion or intimidation to knowingly induce or compel any other person to vote or refrain from voting, vote or refrain from voting for any particular candidate or ballot measure, or refrain from registering to vote.

III. No person shall engage in voter suppression by knowingly attempting to prevent or deter another person from voting or registering to vote based on fraudulent, deceptive, misleading, or spurious grounds or information. Prohibited acts of voter suppression include:

(a) Challenging another person's right to register to vote or to vote based on information that he or she knows to be false or misleading.

(b) Attempting to induce another person to refrain from registering to vote or from voting by providing that person with information that he or she knows to be false or misleading.

(c) Attempting to induce another person to refrain from registering to vote or from voting at the proper place or time by providing information that he or she knows to be false or misleading about the date, time, place, or manner of the election.

IV. Whoever violates the provisions of this section or whoever conspires to violate the provisions of this section shall be guilty of a class B felony.

V. This section is not intended to preclude prosecution or sentencing under any section of RSA 640.

**659:40-a Interference With Communications.** Any person who, on the day of any election, knowingly blocks, or solicits another person to block, the access of any candidate or committee to the candidate's or the committee's communications equipment or services with the intent of interfering with campaign activity shall be guilty of a class B felony.

**659:41 Assault, Etc.** Any person who shall assault a town, city, or ward officer as provided in RSA 631 in the discharge of any duty of his office at any election shall be guilty of a class A felony or a class B felony, but never less than a class B felony other provisions of the law to the contrary notwithstanding. Any person who shall take away, injure or destroy the ballot box or checklist when in use at any election shall be guilty of a class B felony.

**659:42 Tampering with Electronic Ballot Counting Devices.** Whoever shall tamper with or injure or attempt to injure any electronic ballot counting device for the counting of ballots to be used or being used in an election or whoever shall prevent or attempt to prevent the correct operation of such device or whoever shall tamper with software used in the counting of ballots or design such software so as to cause incorrect tabulation of the ballots or any unauthorized person who shall make or have in his or her possession a key to an electronic ballot counting device to be used or being used in an election shall be guilty of a class B felony if a natural person or guilty of a felony if any other person.

**659:43 Distributing Campaign Materials at Polling Place.** I. No person who is a candidate for office or who is representing or working for a candidate shall distribute or post at a polling place any campaign material in the form of a poster, card, handbill, placard, picture, or circular which is intended to influence the action of the voter within the building where the election is being held.

II. No person who is a candidate for office or who is representing or working for a candidate shall distribute any campaign materials or perform any electioneering activities or any activity which affects the safety, welfare and rights of voters within a corridor 10 feet wide and extending a distance from the entrance door of the building as determined by the moderator where the election is being held.

III. Whoever violates any of the provisions of this section shall be guilty of a violation.

IV. (a) Whoever violates any of the provisions of this section shall be subject to a civil penalty not to exceed \$1,000.

(b) The court, upon petition of the attorney general, may levy upon any person who violates the provisions of RSA 659:43 a civil penalty in an amount not to exceed \$1,000 per violation. All penalties assessed under this paragraph shall be paid to the secretary of state for deposit into the general fund.



(c) The attorney general shall have authority to notify suspected violators of this section of the state's intention to seek a civil penalty, to negotiate, and to settle with such suspected violators without court action, provided any civil penalty paid as settlement shall be paid to the secretary of state for deposit into the general fund.

**659:44 Electioneering at the Polling Place.** No election officer shall electioneer while in the performance of his official duties. For the purposes of this section, "electioneer" shall mean to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this provision shall be guilty of a misdemeanor.

**659:44-a Electioneering by Public Employees.** No public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties or use government property, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering. For the purposes of this section, "electioneer" means to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this section shall be guilty of a misdemeanor.

**659:45 General Provisions.** It shall be the responsibility of the moderator to report any violation occurring under RSA 659:34 through RSA 659:44 to the attorney general. All fines imposed under RSA 659:35 through RSA 659:44 shall be paid to the county in which the offense was committed. All penalties assessed under RSA 659:34 shall be paid to the secretary of state for deposit into the general fund.

### **Processing Absentee Ballots**

**659:46 Delivery of Absentee Ballots to Moderator.** Prior to the closing of the polls or the time set for processing absentee ballots as provided in RSA 659:49, the town or city clerk shall deliver all absentee ballots to the moderator as provided in RSA 657:23.

**659:47 Absentee Ballots Received Late.** No absentee ballot shall be processed or counted unless it is delivered to the moderator at the proper polling place prior to the closing of the polls.

**659:48 Death of a Voter.** If the officers charged with the duty of processing absentee ballots are cognizant of the fact that the voter has died prior to the opening of the polls, they shall not open the envelope containing the absentee ballot.

**659:49 Processing Absentee Ballots.** I. Processing of previously received absentee ballots shall begin at 1:00 p.m. The processing of the absentee ballots shall not unnecessarily interfere with normal voting procedures, nor shall the polls be closed at any time during the processing of such ballots. Absentee ballots which are received after 1:00 p.m. and prior to 5:00 p.m. shall be processed as soon after receipt as possible. Under no circumstances shall absentee ballots be counted prior to the closing of the polls.

II. Notwithstanding the provisions of paragraph I, upon the written challenges of 10 or more voters who are present at the polls no later than 1:00 p.m., the moderator shall postpone the processing of all absentee ballots until after the polls close and prior to the counting of all ballots cast in the election.

**659:49-a Option to Count Absentee Ballots Before Closing of Polls.** Repealed Chapter 246, Laws of 1998.

**659:49-b Opening Absentee Ballot Outer Envelopes.** The moderator or the moderator's designee may authorize the opening of absentee ballot outer envelopes on election day prior to the time established for processing absentee ballots in RSA 659:49; provided that the opening of the outer envelopes occurs in public with notice of the time and place. The envelope containing the ballot shall not be removed from the outer envelope at such time, and the outer envelope containing the inner envelope shall be secured until it is processed pursuant to RSA 659:50.

**659:50 Announcement by Moderator.** The moderator shall begin processing absentee ballots by clearly announcing that he or she is about to open the envelopes which were delivered by him or her. The moderator shall then remove the envelope containing the ballots of each absentee voter and shall compare the signature on the affidavit with the signature on the application for the ballot. If:

I. The name of the voter is on the checklist; and  
II. The affidavit appears to be properly executed; and  
III. The signature on the affidavit appears to be executed by the same person who signed the application; and  
IV. The signatures appear to be the signatures of a duly qualified voter who has not voted at the election; then the moderator shall publicly announce the name of the absentee voter, except that with respect to any voter who has been included in the address confidentiality program under RSA 7:43 or who has been granted a protection order under RSA 173-B, the moderator shall identify such voters as “confidential voter number 1” and “confidential voter number 2,” and so forth. If these conditions are not met, the moderator shall follow the procedure provided in RSA 659:53.

**659:51 Challenges.** I. All absentee ballots are subject to challenge after the moderator publicly announces the name of the absentee voter, except for voters provided for in RSA 7:46, but not after the ballot is removed from the envelope. No challenge to an absentee ballot may be asserted except in conformity with the requirements of RSA 659:27-a.

II. If the ballot is challenged, the moderator shall write on the envelope containing the ballot the word “challenged” and the name and address of the person who makes the challenge and the basis of the challenge. The moderator shall also number each challenged envelope consecutively by marking, for example, the first challenged ballot “Challenged Ballot No. 1.”

III. The moderator shall then determine if the challenge to the ballot is well grounded. If the moderator decides the challenge is well grounded, the moderator shall not open the envelope but shall preserve it with the other ballots cast at the election as provided in RSA 659:101 and shall record next to the name of the absentee voter on the clerk’s list of absentee voters prepared pursuant to RSA 657:15 the word “challenged” and the reason for the challenge. The clerk shall record this information in the statewide centralized voter registration database. If the moderator decides that the challenge is not well grounded, he or she shall open the envelope so the affidavit is not destroyed and proceed first to mark on the reverse of the folded ballot the corresponding challenge number as previously marked on the envelope. The moderator shall then proceed to deposit the ballot as provided in RSA 659:52.

**659:52 Opening Envelope; Depositing Ballot.** If the absentee ballot is not challenged, the moderator shall, after announcing the name of the voter, open the envelope containing the ballot so the affidavit is not destroyed. The moderator shall then take the ballot out of the envelope without unfolding the ballot or without permitting the ballot to be examined, and he or she shall preserve the affidavit with the ballots cast at the election as provided in RSA 659:101. The moderator shall then have a checkmark placed beside the name of the absentee voter on the checklist and write therewith the letters “A.V.” in red ink and shall then deposit the ballot in the ballot box.

**659:53 Forms Not in Order.** If the moderator finds that the absentee voter is not entitled to vote, the moderator shall not open the envelope and shall mark across the face of the envelope the reason the ballot is rejected, such as “rejected as not a voter,” “voted in person,” “affidavit improperly executed,” “not signed by proper person,” or whatever the reason is and shall record next to the name of the absentee voter on the clerk’s list of absentee voter applicants prepared pursuant to RSA 657:15 the word “rejected” and the reason for the rejection. The clerk shall record this information in the statewide centralized voter registration database. The moderator shall save all the unopened envelopes and shall preserve the envelopes with the ballots cast at the election as provided in RSA 659:101.

**659:54 Immaterial Defects.** No absentee ballot shall be rejected by the moderator for any immaterial addition, omission, or irregularity in the preparation or execution of any writing or affidavit required herein.

**659:54-a Immaterial Defects; Electronically Transmitted Absentee Ballots.** No electronically transmitted absentee ballot shall be rejected by the moderator for any ballot, envelope, or affidavit weight, size, or color, or any ink font size, alignment, or color.

**659:55 Absentee Voter Not to Vote in Person.**

Notwithstanding any other provision of law, if a red ink “A.V.” is properly placed against the name of a voter who has voted by absentee ballot, that voter against whose name the red ink “A.V.” has been properly placed and who has voted by absentee ballot shall not be permitted to vote in person.

## **Certification of Checklist**

**659:56 Certification of Checklist.** After the closing of the polls at a state election, the moderator and the town or ward clerk shall certify on the checklist used by them that such checklist is in fact the one used by them at said election and that it contains a correct and complete list of the legal voters in their town or ward.

**659:57 Transfer of Checklist.** The certified checklist shall be used to prepare the election return as provided in RSA 659:74 and shall then be delivered to the supervisors by the town or ward clerk.

## **Counting of Votes**

**659:58 Disqualification of Officials.** Any election official, other than the moderator, who is also a candidate for office shall not be allowed to remain within the guardrail during the counting of votes for an office for which he is a candidate. Such official shall disqualify himself from election duties relating to the tabulation of votes; and the moderator shall appoint an assistant who shall take the same oath as, serve in the same capacity as, and have all the powers of the election official who is disqualified until such official may properly return.

**659:59 Optional Counting of Votes at Additional Polling Places.** The moderator may order the assistant moderator in writing to process absentee ballots and to count the votes cast at the additional polling place in the presence of and with the assistance of the assistant town clerk and election officials in the manner prescribed by this chapter. After the processing of absentee ballots and the counting are complete, the assistant moderator shall place the counted ballots in the ballot box and shall seal it, and the assistant town clerk shall certify the same. The assistant moderator shall also seal in a package the duplicate checklists used at the additional polling place together with the absentee envelopes and the spoiled and unused ballots; and he, together with the assistant town clerk, shall immediately deliver the ballot box, checklists, absentee envelopes, unused and spoiled ballots, and a written report of his count signed by him and the assistant town clerk to the moderator of the town at the central polling place. If the moderator does not order the counting as provided herein, the assistant moderator shall comply with the provisions of RSA 659:62.

**659:60 Duties of Moderator.** The moderator, or the moderator pro tempore if the moderator is disqualified under RSA 658:24, shall oversee the counting of votes by other election officers, including the selectmen and the town clerk, and may discharge any other duties relating to the counting of votes.

**659:61 Votes Counted After Processing of Absentee Ballots.** After all absentee ballots have been processed, or processed and counted, as provided in RSA 659:49-55, and after the polls have closed, the election officials, except those disqualified in accordance with RSA 659:58, shall, under the supervision of the moderator, immediately begin counting the votes cast at the election. The moderator may use the assistance of a person appointed by the secretary of state or the attorney general to assist in the completion of the election return forms.

**659:62 Return of Materials from Additional Polling Place.** Except as provided in RSA 659:59, upon the closing of the polls at each additional polling place, the ballot box at such polling place shall be sealed by the assistant moderator. Such sealing shall be done in the presence of the inspectors of election and shall be certified by the assistant clerk at such polling place. The assistant moderator shall also seal in a package the duplicate checklists used at the additional polling place together with the unused and spoiled ballots. The ballot box and the package shall be delivered to the moderator at the central polling place without unnecessary delay and with the seals unbroken by 2 election officials designated by the assistant moderator. Such 2 election officials shall be of different political parties.

**659:63 Counting to be Public.** The counting of votes shall be public and conducted within the guardrail and shall not be adjourned nor postponed until it shall have been completed. No ballot shall be placed within 4 feet of the guardrail during the counting of votes.

**659:64 Determining Intention of Voter.** If a ballot is marked for any office in a way which does not readily admit of counting or if a disagreement over how to count the ballot for any office occurs among the election officers present and counting votes, then the ballot shall be counted for that office in accordance with the majority vote of the election officials present and counting votes; provided that, if no alternative count receives a majority vote, the ballot shall be regarded as defective for that office as provided in RSA 659:65.

**659:65 Defective Ballots.** A ballot shall be regarded as defective in whole or in part and shall not be counted in whole or in part as follows:

I. A ballot shall be regarded as defective in whole and shall not be counted in whole if either or both of the following conditions exist:

(a) The ballot does not have printed upon it the official endorsement in accordance with RSA 656:17; unless it has been prepared in accordance with RSA 658:35.

(b) No count of the ballot for any office received a majority vote of the election officials as provided in RSA 659:64.

II. A ballot shall be regarded as defective in part and that part shall not be tabulated if either or both of the following conditions exist:

(a) No count of the ballot for one or more (but less than all) offices received a majority vote of the election officials as provided in RSA 659:64, but the count of the ballot for the other offices results in no disagreement or can be agreed on by majority vote as provided in RSA 659:64.

(b) The ballot has attached to it an adhesive slip, sticker, or paster not prepared in accordance with RSA 656:21 in the space for any office, but the rest of the ballot admits to counting as provided in paragraph II(a).

### **Special Provisions for Counting Votes on State General Election Ballots**

**659:66 Counting Straight Party Vote.** Repealed by Chapter 1, Laws of 2007.

**659:67 Write-in Votes.** In the case of a write-in vote for a candidate whose name appears on the ballot as the nominee of a party for the same office, said write-in vote shall be counted as an additional vote for said candidate; but the said individual ballot shall be counted as only one vote for the same person for the same office.

**659:68 Counting Vote When a Candidate is Nominated by More Than One Party.** (Repealed by Ch. 36; 1996)

### **Special Provisions for Counting Vote on State and Presidential Primary Election Ballots**

**659:69 Counting Votes on Different Party Ballots.** Votes cast for the same person for the same office on the ballots of different parties at any primary election shall not be added together but shall be credited to the party on whose ballot his name appears and the vote is cast.

### **Completing the Count and Announcing the Results**

**659:70 Final Counting; Result.** The final count of all votes on all ballots cast at the central and additional polling places, if any, shall be combined and the moderator shall announce the final count for each office.

### **Election Returns**

**659:71 When to Prepare Return.** After the tabulation of votes has been completed and the result has been announced by the moderator as provided in RSA 659:70, the town or ward clerk shall prepare the election return in the presence of the other election officials.

**659:72 Secretary of State to Prepare Return Blanks.** Prior to any state election, the secretary of state shall prepare and distribute to each town, city, or ward clerk election return forms together with such instructions as the secretary of state shall deem necessary.

**659:73 General Content of Return.** I. The election return forms shall be submitted on paper and electronically immediately after the completion of the vote count in the manner prescribed by the secretary of state. The return of votes shall include, but not be limited to:

- (a) The name of each candidate printed on the ballot and the number of votes that candidate received for the listed office including any write-in votes for the same office on the same ballot where the voter did not mark the printed candidate name.
- (b) For each office the total number of votes cast for each write-in candidate who received 5 or more votes and the candidate's name, along with the aggregate number of all other write-in votes cast for each candidate receiving less than 5 votes, excluding write-in votes for candidates whose names were printed on the ballot where the voter did not mark the printed candidate name and the vote is reported under subparagraph (a).
- (c) For any question submitted to the voters:
  - (1) The number of affirmative votes.
  - (2) The number of negative votes.
- (d) In a primary, the number of ballots cast for each party.
- (e) In a general election, the number of ballots cast.

II. Within 48 hours of the closing of the polls or other time ordered by the secretary of state, the moderator shall forward to the secretary of state a list of all write-in candidates receiving between one and 4 votes in the election.

III. The secretary of state shall provide guidance for completing the return of votes in the election procedure manual issued pursuant to RSA 652:22. The secretary of state may provide an electronic version of the return of votes capable of being used on a computer at the polling place to assist moderators and clerks in completing and submitting the paper and electronic forms.

IV. The moderator shall fill out a moderator's certificate prepared by the secretary of state, which shall be recorded and signed by the moderator within 48 hours of the closing of the polls or other time ordered by the secretary of state and submitted to the clerk. The worksheet shall include, but not be limited to:

- (a) The number of official ballots received from the secretary of state brought to the polling place by the city or town clerk on election day, excluding ballots marked as test ballots and used prior to election day to test an electronic ballot counting device.
- (b) The number of official ballots cast on election day.
- (c) If the polling place runs out of official ballots, the number of absentee ballots used as official ballots and cast.
- (d) If the polling place runs out of official ballots, the number of photocopy ballots used as official ballots and cast.
- (e) The number of Accessible Voting System ballots cast.
- (f) The number of state absentee ballots cast.
- (g) The number of federal offices only absentee ballots cast.
- (h) The number of state write-in absentee ballots cast.
- (i) The number of federal write-in absentee ballots cast.
- (j) A comparison of the different methods of tallying ballots cast.

V. The moderator shall record and sign a names on the checklist form within 48 hours of the closing of the polls, unless the secretary of state directs otherwise, and shall submit the form to the secretary of state, with a copy to the clerk. The names on checklist form shall include, but not be limited to:

- (a) The number of people who registered to vote on election day.
- (b) For each party, the total number of voters registered as members of the party.
- (c) The number of undeclared voters that cast ballots for each party at a state or presidential primary election.
- (d) The number of undeclared voters that returned to undeclared after voting in a state or presidential primary election.

VI. The moderator shall record and sign a ballots cast form prepared by the secretary of state within 48 hours of the closing of the polls, or other time ordered by the secretary of state, and shall submit the form to the secretary of state, with a copy to the clerk. The ballots cast form shall include, but not be limited to:

- (a) The number of voters who voted in person on election day checked off on the checklist as having voted.
- (b) The number of absentee voters checked off on the checklist as having voted.

VII. The town or city clerk may require that forms be completed under this section earlier than the time required by the secretary of state.

**659:74 Preparing Return.** The town or ward clerk shall prepare the election return in duplicate on the forms supplied by the secretary of state and shall sign and shall certify such returns.



**659:75 Forwarding; Retaining Copies of Return.** One copy of the election return shall be forwarded by the town or ward clerk to the secretary of state in both paper and electronic form no later than 8:00 a.m. on the day following a state election unless the secretary of state orders them at a different time and date. The other shall be kept by the town or city clerk in accordance with RSA 33-A:3-a and shall be open to public inspection at reasonable times. If an official state election return is sealed along with the ballots, the clerk having custody of the sealed ballots shall, at the request of the secretary of state, and in the presence of a state election official, unseal the ballots and retrieve the election return. The ballots shall be immediately resealed and the election return shall be delivered to the secretary of state by the election official.

**659:76 Return from Unincorporated Place.** As provided in RSA 668:7, the town clerk shall prepare and forward a return of the votes cast in his town by voters of unincorporated places, if any, in the same manner as provided in RSA 659:71 - 75.

### **Defective Returns; Penalties**

**659:77 General Neglect by Town or Ward Moderator and Clerk.** I. If any moderator shall intentionally neglect to cause an accurate count to be made of the votes cast as required by law, for which no other penalty is provided, he or she shall be guilty of a violation.

II. If any town or ward clerk shall intentionally neglect to make any return of votes required by law, for which no other penalty is provided, he or she shall be guilty of a violation.

III. If a return of votes is not timely submitted or is submitted with significant defects, if a recount discloses that the election night vote count was significantly inaccurate, or if other significant deficiencies in the conduct of an election are documented the secretary of state shall report the same to the attorney general. Upon a finding by the attorney general that the late submission, miscount, or other significant deficiency was due to lack of training, lack of established procedures, negligence, or misconduct, the secretary of state in consultation with the attorney general shall appoint an election monitor who shall be an individual trained in the conduct of elections and who shall attend portions of the ballot casting and all of the ballot counting to monitor the next election conducted in that town or ward. The finding of the attorney general may be appealed to the ballot law commission.

IV. An election monitor appointed under paragraph III shall have full access to the polling place, including authority to directly observe the registration of voters on election day, the checking in of voters by inspectors of elections, assistance to voters with disabilities, the use of the accessible voting system, the receipt of ballots, the processing of absentee ballots, and the counting of ballots, and may handle marked ballots for the purposes of instruction during the counting and tabulating process.

V. An election monitor appointed under paragraph III may provide training and guidance to the moderator and clerk who conducts the election. The election monitor shall issue a public written report within 30 days following the election to the voters of the town or ward, the secretary of state, and the attorney general, which shall be posted on the secretary of state's website, documenting the extent to which the town or ward complies with state law and utilizes the best practices set forth in the election procedures manual and the on-line training available on the secretary of state's website in conducting the monitored election.

**659:78 Late Return.** Whenever the election return of any town or ward has not been received by the secretary of state by 8:00 a.m. on the day after a state election, the secretary of state shall so notify the attorney general and the moderator, the selectmen, and the clerk of the town or ward who shall forward such return forthwith.

**659:79 Incorrect or Incomplete Return; Amendment.** If a town or ward clerk shall make an incorrect or incomplete election return, the moderator may require the clerk, at his or her own expense, to appear and amend the return according to the facts within 4 hours of receipt of notification from the secretary of state. If the clerk shall refuse to appear and amend the return, he or she shall be guilty of a violation.

**659:80 False Return.** If a town or ward clerk shall knowingly make a false election return, he shall be guilty of a class B felony.

### **Canvass and Declaration: State General Election**

**659:81 Canvass and Declaration Generally.** Except as provided in RSA 659:82, when the secretary of state has received the returns for an office from all towns or wards comprising the elective district for that office, he shall examine,

record and total such returns and shall declare elected to the office the same number of persons as the number of officers to which the district is entitled; provided that those persons declared officers-elect shall be those persons who received the highest number of votes cast for said office.

**659:82 Declaration of State Representatives-Elect From Representative District Containing Only One Town or Ward.** In a state representative district containing only one town or ward, the moderator of such town or ward shall declare state representatives-elect from such district.

**659:83 Certificate of Election Blanks.** The secretary of state shall prepare certificate of election blanks before any state general election and shall retain the appropriate blanks for his own use.

**659:84 Certificates of Election.** When the time for any recount or appeal to the ballot law commission or superior court has expired or when all candidates for an office whose names were placed on the official state general election ballot have waived in writing a recount and an appeal, whichever is first:

- I. The governor shall issue certificates of election to the following officers-elect:
  - (a) Electors of the president and vice-president of the United States;
  - (b) United States senator;
  - (c) United States representatives.
- II. The secretary of state shall issue certificates of election to the following officers-elect:
  - (a) State senators;
  - (b) State representatives;
  - (c) County officers.

III. Repealed by Chapter 254, Laws of 1991.

**659:85 Election to Incompatible Offices.** If, upon, the conclusion of the canvass of votes in any state general election, any person shall have received the largest number of votes for 2 or more incompatible offices, the secretary of state shall notify the candidate of that fact. Thereupon, the candidate shall, within 10 days, notify the secretary of state of which office he intends to accept. The secretary of state shall then declare that person elected to that office and declare vacant the other offices for which the person received a sufficient number of votes to win. Such a vacancy shall be filled as provided by RSA 661.

### **Canvass and Declaration: State Primary Election**

**659:86 Canvass and Declaration Generally.** Except as provided in RSA 659:87, when, for each political party having an official state primary election ballot, the secretary of state has received the returns for a nomination from all towns or wards comprising the elective district for that office, he shall examine, record and total such returns and, for each political party, shall declare nominated for the office the same number of persons as the number of officers to which the district is entitled; provided that those persons declared nominated for the office shall be those persons who, on each party ballot, received the highest number of votes cast for the office, except as provided in RSA 659:91.

**659:87 Declaration of Nominees For Office of State Representative from District Containing Only One Town Or Ward.** In a state representative district containing only one town or ward, the moderator of such town or ward shall, for each political party having an official state primary election ballot, declare nominees for the office of state representative from such district.

**659:88 Write-In Votes and Nomination.** I.(a) A person whose name was not printed on the official state primary election ballot of a political party shall not be entitled to the nomination of that party for any office unless the person received at least 35 write-in votes.

(b) A person whose name was not printed anywhere on the official state primary election ballot, and who receives the nomination of a party by write-in vote in a primary election and wishes to accept the nomination, shall file a declaration of candidacy with the secretary of state no later than 3:00 p.m. on the first Friday after the primary. The declaration of candidacy shall be filed with the understanding that, where the form says "primary election," it shall be

construed to mean “general election.” Such person shall not, however, be required to pay the administrative assessment under RSA 655:19-c.

II. If a person is disqualified from a nomination in accordance with the provisions of paragraph I, then the nomination shall be awarded to the qualified person who received the highest number of votes.

**659:89 Notice of Result.** After the declarations required by RSA 659:86 and 659:87 have been made, the secretary of state shall:

I. Send a certified list of all elected state convention delegates to each state party committee.

II. Notify in writing of his nomination each person nominated by write-in vote at the primary.

**659:90 Rejection of Nomination by Write-In Vote.** The name of a person nominated by write-in vote who fails to file a declaration of candidacy in person, by facsimile, or by e-mailing a signed declaration as an attachment with the secretary of state by 3:00 p.m. on the first Friday following the primary shall not be placed on the general election ballot and will be considered to have rejected the nomination.

**659:91 Nominations for Incompatible Offices.** Any person who is nominated by the same political party for incompatible offices shall notify the secretary of state in person, in writing, by facsimile transmission, or by e-mailing a signed statement as an attachment no later than 3:00 p.m. on the Thursday following the date of the primary of which nomination he or she will accept. Thereupon the secretary of state shall declare a vacancy to exist in the nomination which such person declined. The vacancy shall be filled as provided in RSA 655:37 except that all necessary declarations of candidacy and affidavits shall be filed no later than 5:00 p.m. on the Friday following the date of the primary.

**659:91-a Candidate of One Party.** I. Any person who runs as a candidate on any party's state primary election ballot and who is not chosen as the candidate for that party for the elective office for which the person was a candidate shall not under any circumstances run as the nominee of a different party in the state general election.

II. Notwithstanding the provisions of RSA 655:37, if any candidate is disqualified from accepting the nomination of another party by means of write-in votes because the candidate is disqualified under the provisions of paragraph I, then the nomination shall be given to the candidate who received the highest number of write-in votes and who was not disqualified under the provisions of paragraph I, so long as he or she receives 10 write-in votes, or write-in votes equaling 10 percent or more of the total votes cast for that party on the state primary election ballot, whichever is the smaller.

### **Canvass and Declaration: Presidential Primary Election**

**659:92 Canvass; Publication.** When, for each political party having an official presidential primary election ballot, the secretary of state has received the returns for the office of president from all towns and wards in the state, he shall examine, record and total such returns, which shall be a matter of public record.

**659:93 Apportionment of Delegates; Notice.** I. The secretary of state shall apportion delegates to the national party conventions among the candidates voted for at the presidential primary by determining the proportion of the number of votes cast for each presidential candidate to the total votes cast for all presidential candidates of the same political party, rounded to the nearest whole number.

II. A presidential candidate must receive at least 10 percent, before any rounding to the nearest whole number, of the total vote cast for all presidential candidates of his political party to be eligible for a share of the apportioned delegates.

III. In the event the apportionment of delegates according to paragraphs I and II leaves one or more delegates unassigned by the process of mathematical distribution, said delegates shall be apportioned to the presidential candidate of that party with the highest number of votes.

IV. Only one alternate for each delegate shall be authorized.

V. After determining the apportionment of delegates according to this section, the secretary of state shall send by mail notice to each candidate the number of delegates to which he is entitled pursuant to this section. The candidate shall within 10 days after notice is sent to him notify the secretary of state of which delegates and alternates on the list filed pursuant to RSA 655:50 that he chooses to be his delegation at the national convention. The secretary of state shall then notify by mail each delegate and alternate chosen by the candidate to support his candidacy at the national convention.

VI. If a presidential candidate has received a share of the delegates as a result of the presidential primary but withdraws as a presidential candidate at any time prior to the convention, his pledged delegates shall be released by the candidate and each delegate is free to support any candidate of his political party who may be his choice as a candidate for president.

**659:94 Write-In Vote.** If a presidential candidate receives as write-in votes 10 percent or more, before any rounding to the nearest whole number, of the total votes cast for all such candidates of a political party, the secretary of state shall so notify in writing the person; and the person shall then select the number of delegates and alternates to which he is entitled according to RSA 659:93 and such delegates and alternates shall file the certification provided for in RSA 655:51.

### **Preservation of Ballots and Other Election Materials**

**659:95 Sealing and Certifying Ballots.** I. Immediately after the ballots cast at a state election have been tabulated and the result has been announced and the return has been made, the moderator or the moderator's designee, in the presence of the selectmen or their designee, shall place the cast, cancelled, and uncast ballots, including such ballots from any additional polling places, and further including the successfully challenged and rejected absentee ballots still contained in their envelopes, in the containers provided by the secretary of state as required by RSA 659:97 and shall seal such container with the sealer provided by the secretary of state as required by RSA 659:97. The moderator or the moderator's designee shall then enter in the appropriate blanks on such sealer on each container the number of cast, cancelled, and uncast ballots in such container and shall endorse in the appropriate place on such sealer a certificate in substance as follows: Enclosed are the ballots from the state election in the town of \_\_\_\_\_ (or in ward \_\_\_\_ in the city of \_\_\_\_\_) held on \_\_\_\_\_, 20\_\_\_\_, Box \_\_\_\_ of \_\_\_\_\_ to be preserved in accordance with RSA 33-A:3-a. The moderator and the selectmen or their designee shall sign their names in the appropriate blanks on the sealer.

II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged and rejected absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.

**659:96 Ballots for Constitutional Amendments.** If a question to voters is submitted to the vote of the people on a special and separate ballot as provided in RSA 663:1, then those ballots shall be sealed and certified in a separate container as provided in RSA 659:95 except as provided in RSA 659:97.

**659:97 Secretary of State to Prepare Containers, Sealers.** The secretary of state shall, before any state election, prepare and distribute to each town and ward clerk containers to be used for preserving ballots and sealers to seal each such container. He shall prepare special containers and sealers to be used for preserving any special and separate ballots for questions to voters. The secretary of state shall prescribe the size and form of such containers and sealers and shall prescribe the form of any endorsement blank printed upon the sealers provided that the blank is in substance consistent with the provisions of RSA 659:95.

**659:98 Delivery of Ballots to Town Clerk.** The moderator, or the moderator's designee, and the selectmen, or their designee, after they have sealed and certified the state election ballots as provided in RSA 659:95 and 659:96, shall deliver the sealed containers to the town or city clerk, or to the clerk's designee, who shall in their presence enter in the appropriate place on each sealer the time of day and shall sign his or her name in the appropriate blank on the sealer. The clerk or the clerk's designee shall, without breaking the seals or otherwise changing the condition of the containers, deposit the containers in the town or city hall, where the ballots shall be kept for a period set forth in RSA 33-A:3-a.

**659:99 Forwarding Ballots to the Secretary of State.** If any person shall make a request for a recount as provided in RSA 660, or if the secretary of state shall request the ballots of the recent election, the clerk having the custody of such ballots shall, at the request of the secretary of state, forward the ballots forthwith to the secretary of state.

**659:100 Destruction of Ballots.** All state election ballots remaining in the possession of the town or city clerk may be destroyed in accordance with RSA 33-A:3-a.

**659:101 Preservation of Absentee Voting Materials, Election Day Affidavits, and Domicile Affidavits.** The absentee ballot affidavits and application forms processed by the moderator as provided in RSA 659:50, the absentee ballots challenged and rejected as provided in RSA 659:51 and RSA 659:53, and the qualified voter affidavits and domicile affidavits as provided in RSA 654:12 and any other documentary proof of qualifications retained by the town or city clerk, the supervisors of the checklist, or other election official shall be preserved in accordance with RSA 33-A:3-a. Qualified voter, voter registration, and domicile affidavits shall be retained for the period set forth in RSA 33-A:3-a, and other materials may be destroyed after the election is settled and all appeals have expired or one year after the election, whichever is longer.

**659:102 Preservation of Checklists.** No later than the fourth Friday after each regular state general election, and for each presidential primary election, the supervisors of the checklist in the towns, and the corresponding officers in the cities, shall send one of the marked checklists which were used in that election, certified by the officers, to the state archives. In addition, if directed by the secretary of state, they shall send one of the unmarked checklists which were used in the state general election at which a president was elected to the clerk of the federal district court for the district of New Hampshire. One marked copy of every checklist used in any election shall be turned over to the town or city clerk by the supervisors. The clerk shall preserve such checklists in his or her custody for a public record for a period set forth in RSA 33-A:3-a.

**659:103 Preservation of Challenge Affidavits.** The forms completed by challengers and affidavits made by challenged voters as provided in RSA 659:27 and RSA 659:27-a shall be preserved in accordance with RSA 33-A:3-a.